

**IN THE CIRCUIT COURT OF HARRISON COUNTY, MISSISSIPPI
SECOND JUDICIAL DISTRICT**

MICHAEL GILLICH, III

PLAINTIFF

VS.

CAUSE NO. A2402-19-6

**NATHAN MCWILLIAMS AND
BOYD BILOXI, LLC DBA
IP CASINO RESORT SPA**

DEFENDANTS

BOYD BILOXI LLC'S ANSWER

NOW COMES this Defendant, Boyd Biloxi, LLC d/b/a IP Casino Resort Spa, by and through its attorneys, Brown Buchanan P.A., and in answer to the First Amended Complaint filed against it, would state as follows:

PARTIES AND VENUE

1. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the First Amended Complaint.

2. The allegations contained in Paragraph 2 of the First Amended Complaint do not pertain to this Defendant, therefore this Defendant need not respond.

3. This Defendant admits that it is a Mississippi limited liability company that may be served with process as prescribed by law. Everything not herein specifically admitted is denied.

4. This Defendant does not contest venue. Everything not herein specifically admitted is denied.

FACTS

5. The allegations contained in Paragraph 5 of the First Amended Complaint do not pertain to this Defendant, therefore this Defendant need not respond.

6. The allegations contained in Paragraph 6 of the First Amended Complaint do not pertain to this Defendant, therefore this Defendant need not respond.

7. The allegations contained in Paragraph 7 of the First Amended Complaint do not pertain to this Defendant, therefore this Defendant need not respond.

8. The allegations contained in Paragraph 8 of the First Amended Complaint do not pertain to this Defendant, therefore this Defendant need not respond.

9. The allegations contained in Paragraph 9 of the First Amended Complaint do not pertain to this Defendant, therefore this Defendant need not respond.

10. This Defendant admits that on September 15, 2018, Nathan McWilliams was an employee of this Defendant. This Defendant is without knowledge or information sufficient to respond to the remaining allegations contained in Paragraph 10 of the First Amended Complaint and therefore denies same.

11. This Defendant admits that Nathan McWilliams was not working at the time of the subject accident. The remaining allegations contained in Paragraph 11 of the First Amended Complaint are denied. Everything not herein specifically admitted is denied.

12. The allegations contained in Paragraph 12 of the First Amended Complaint are denied.

13. The allegations contained in Paragraph 13 of the First Amended Complaint are denied.

COUNT ONE: NEGLIGENCE AND GROSS NEGLIGENCE OF MCWILLIAMS

14. This Defendant denies the allegations contained in Paragraph 14 of the First Amended Complaint, as they are said to apply to this Defendant, including but not limited to sub-parts a - l.

15. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15 of the First Amended Complaint. This Defendant denies that it is liable to the Plaintiff for any reason whatsoever.

16. This Defendant denies the allegations contained in Paragraph 16 of the First Amended Complaint, as they are said to apply to this Defendant.

17. This Defendant denies the allegations contained in Paragraph 17 of the First Amended Complaint.

COUNT TWO: DRAM SHOP LIABILITY FOR THE NEGLIGENCE AND GROSS NEGLIGENCE OF ALCOHOL SERVER AND IP CASINO

18. This Defendant incorporates its answers to Paragraphs 1 - 17 of the First Amended Complaint as if herein set forth in full in response to the allegations contained in Paragraph 18 of the First Amended Complaint.

19. This Defendant denies the allegations contained in Paragraph 19 of the First Amended Complaint.

20. This Defendant admits that it has an Alcohol Beverage Control permit. Everything not herein specifically admitted is denied.

21. This Defendant denies the allegations contained in Paragraph 21 of the First Amended Complaint.

22. This Defendant denies the allegations contained in Paragraph 22 of the First Amended Complaint, including but not limited to sub-parts a - f.

**COUNT THREE: NEGLIGENT HIRING, TRAINING, RETENTION
AND/OR SUPERVISION**

23. This Defendant incorporates its answers to Paragraphs 1 - 22 of the First Amended Complaint as if herein set forth in full in response to the allegations contained in Paragraph 23 of the First Amended Complaint.

24. This Defendant denies the allegations contained in Paragraph 24 of the First Amended Complaint.

25. This Defendant denies the allegations contained in Paragraph 25 of the First Amended Complaint.

26. This Defendant denies the allegations contained in Paragraph 26 of the First Amended Complaint.

27. This Defendant denies the allegations contained in Paragraph 27 of the First Amended Complaint.

28. The allegations contained in Paragraph require no response.

This Defendant denies that the Plaintiff is entitled to any recovery whatsoever against him.

AFFIRMATIVE DEFENSES

NOW, HAVING answered the specific allegations of the First Amended Complaint, this Defendant would state its Affirmative Defenses as follows, to-wit:

FIRST DEFENSE

The First Amended Complaint fails to state a claim against this Defendant upon which relief can be granted.

SECOND DEFENSE

The incident and damages of which the Plaintiff complains was caused or contributed to by the negligence of the Plaintiff.

THIRD DEFENSE

The damages of which Plaintiff complains were the result of a preexisting condition for which this Defendant is not liable.

FOURTH DEFENSE

The incident and damages of which Plaintiffs complain were caused or contributed to by the negligence of a person or persons for whom this Defendant is not liable.

FIFTH DEFENSE

This Defendant specifically reserves all of its defenses pursuant to Rule 12 of the Mississippi Rules of Civil Procedure.

SIXTH DEFENSE

This Defendant pleads all rights, remedies and defenses available to it pursuant to Miss. Code Ann. § 67-3-73.

SEVENTH DEFENSE

This Defendant pleads all rights, remedies and affirmative defenses available to it pursuant to Miss. Code Ann. § 85-5-7.

EIGHTH DEFENSE

The imposition of punitive damages in this action would violate the due process clause of the United States Constitution.

NINTH DEFENSE

The procedural methods asserted for awarding punitive damages in this action violate the due process clause of the United States Constitution.

TENTH DEFENSE

The claim of Plaintiff for punitive damages against this Defendant cannot be sustained because an award of punitive damages under Mississippi law is subject to no predetermined limit, such as a maximum multiple of compensatory damages or a maximum amount, on the amount of punitive damages that a jury may impose, would

violate these Defendants due process rights guaranteed by the Fourteenth Amendment of the United States Constitution.

ELEVENTH DEFENSE

First, Plaintiff's claims for punitive damages cannot be sustained because Mississippi jury instructions do not inform the jury that the amount of punitive damages that may be awarded must bear a necessary relationship to the actual harm to Plaintiff, which violates this Defendant's due process and equal protection rights guaranteed by the Fourteenth Amendment of the United States Constitution and Article III, Section 14 of the Constitution of the State of Mississippi.

Second, Plaintiff's claims for punitive damages cannot be sustained because Mississippi law does not have a predetermined upper limit for the amount of punitive damages, which violates this Defendant's due process rights guaranteed by the Fourteenth Amendment of the United States Constitution and Article III, Section 14 of the Constitution of the State of Mississippi, and may also result in the violation of this Defendant's rights not to be subjected to an excessive award in violation of Article III, Section 28 of the Constitution of the State of Mississippi.

Third, Plaintiff's claims for punitive damages cannot be sustained because an award of punitive damages under Mississippi law which allows Plaintiff to prejudicially emphasize the corporate status of this Defendant violates this Defendant's due process

and equal protection rights guaranteed by the Fourteenth Amendment of the United States Constitution and Article III, Section 14 of the Constitution of the State of Mississippi.

Fourth, Plaintiff's claims for punitive damages cannot be sustained because Mississippi law allows evidence of this Defendant's net worth at the trial stage of the proceedings, which violates this Defendant's due process rights under the Fourteenth Amendment of the United States Constitution and Article III, Section 14 of the Constitution of the State of Mississippi.

Fifth, Plaintiff's claims for punitive damages cannot be sustained because Mississippi jury instructions do not provide that plaintiffs prove every element of punitive damages beyond a reasonable doubt as required under Article III, Section 14 of the Constitution of the State of Mississippi.

Finally, Plaintiff's claims for punitive damages cannot be sustained because an award of punitive damages under Mississippi law without affording protection similar to those given to criminal defendants would violate this Defendant's rights guaranteed by the United States Constitution and the Constitution of the State of Mississippi.

TWELFTH DEFENSE

This Defendant pleads all rights, remedies and affirmative defenses available to it pursuant to Miss. Code Ann. §11-1-65.

THIRTEENTH DEFENSE

The Defendants plead all rights, remedies and affirmative defenses available to them pursuant to Miss. Code Ann § 63-3-1105.

NOW, HAVING fully answered, this Defendant, Boyd Biloxi, LLC, moves this Court to dismiss the First Amended Complaint against it, with prejudice, and to assess all costs to the Plaintiff.

This the 4th day of March, 2019.

Respectfully submitted,

BOYD BILOXI, LLC d/b/a IP CASINO RESORT SPA

BY: BROWN BUCHANAN P.A.

BY: /s/Patrick R. Buchanan
PATRICK R. BUCHANAN (MSB #8439)

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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have this day electronically filed a true and correct copy of the foregoing pleading with the Clerk of Court using the ECF system which sent notification to such filing to the following:

Jason Ruiz
Morris Bart, LTD
1712 15th Street, Suite 300
Gulfport, MS 39501

Stephen G. Peresich, Sr.
Page Mannino Peresich & McDermott
Post Office Box 289
Biloxi, MS 39533-0289

This the 4th day of March, 2019.

/s/Patrick R. Buchanan
PATRICK R. BUCHANAN (MSB #8439)